



**CITY OF SUNNYVALE  
REPORT  
Planning Commission Hearing**

**November 8, 2004**

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**SUBJECT:**           **2004-0477: Kathey Fyke** (Appellant), **Lidia Barouh** (Applicant) Application on a 4.2-acre condominium complex located at **893 Rattan Terrace** in an R-0/PD (Low Density Residential/Planned Development) Zoning District (APN: 213-56-022):

Motion                   Appeal of a decision by the Administrative Hearing Officer to approve a **Use Permit** to allow a seven-foot high side yard fence.

**REPORT IN BRIEF**

**Existing Site Conditions**           Condominium

**Surrounding Land Uses**

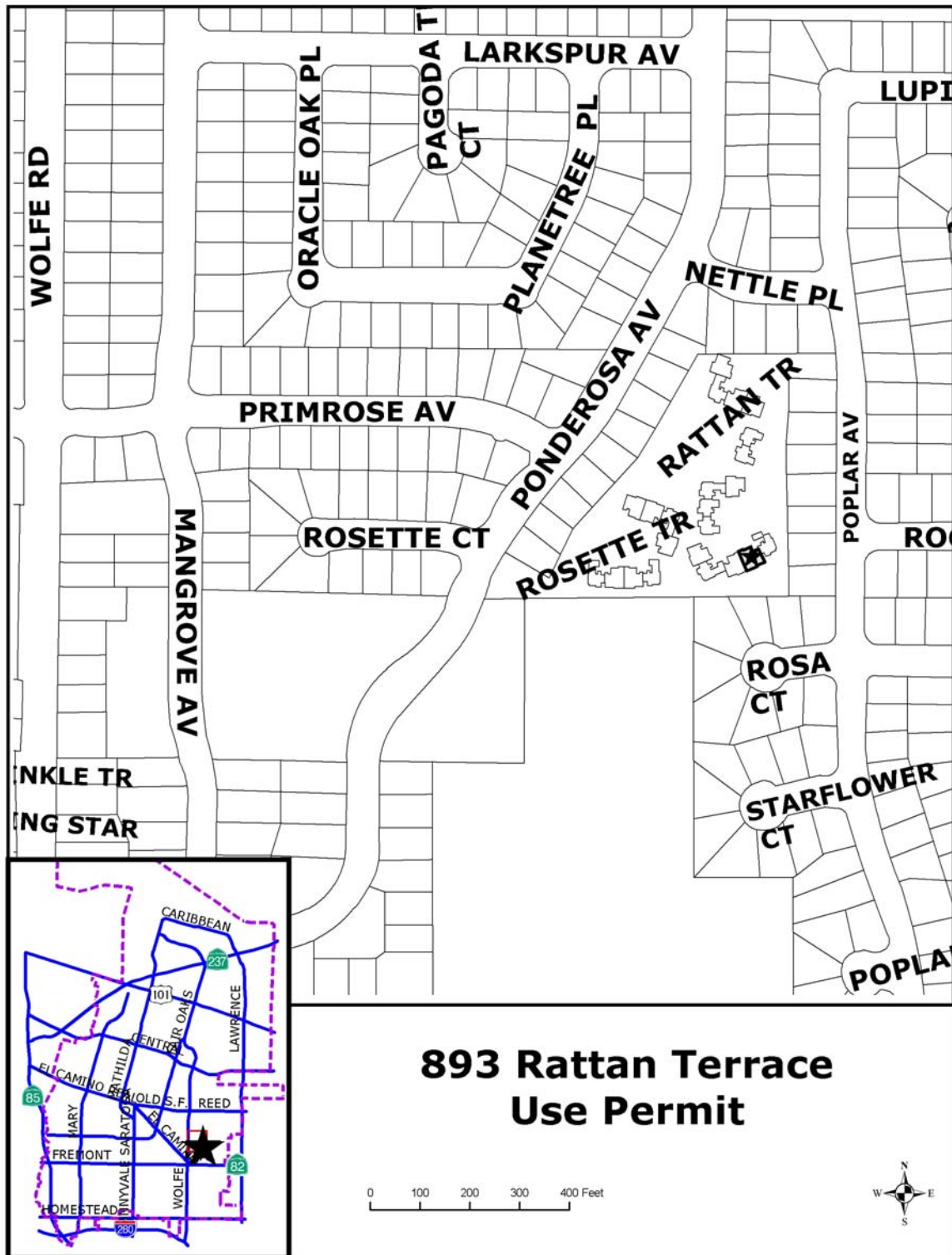
North	Condominium
South	Sunken Gardens Golf Course
East	Single-Family Homes
West	Condominium

**Issues**                   Appropriate fence height  
Privacy concerns

**Environmental Status**           A Class 11 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

**Staff Recommendation**           Approve with conditions

**Administrative Hearing Officer Recommendation**           Approve with conditions



**PROJECT DATA TABLE**

	<b>EXISTING</b>	<b>PROPOSED</b>	<b>REQUIRED/ PERMITTED</b>
<b>General Plan</b>	Low Density Residential	Same	Low Density Residential
<b>Zoning District</b>	R-0/PD	Same	R-0/PD
<b>Lot Size (s.f.)</b>	4.2 acre site with 23 condominiums	Same	6,000 min.
<b>Fence Height (ft.)</b>	6 ft. on left side 7 ft. on right side	7 ft. on both sides	7 ft. max. with adjoining property owner agreement

**ANALYSIS****Description of Proposed Project**

This project is to permit an existing 7 ft. fence approximately 25 ft. in length located between two backyard areas in an approximately northwest direction. The fence was installed without required permits or a written agreement from the adjoining neighbor. The neighbor has appealed the approval by the Administrative Hearing Officer for Planning Commission review.

**Background**

This application is the result of a Neighborhood Preservation complaint from the resident to the left of the project site (appellant). The proposed fence is currently in existence, and photos are located in Attachment F.

**Administrative Hearing:** On July 28, 2004 an Administrative Hearing was held on this application. The adjoining neighbor (appellant) attended the hearing and stated concerns with the process of adequate notification and neighbor involvement in the Use Permit application. She stated that she needed additional time to submit more information. The Hearing Officer took the matter under advisement to allow for the submittal of more information. The Hearing Officer did not receive any further information and approved the Use Permit. The neighbor has appealed this decision.

**Previous Actions on the Site:** The following table summarizes previous planning applications related to the subject site.

File Number	Brief Description	Hearing/Decision	Date
3962	Develop 23 residential condominiums (The original conditions of approval did not specify allowable fence heights.)	City Council Approved	7/24/79

### **Environmental Review**

A Class 11 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 11 Categorical Exemptions include construction of accessory structures.

### **Use Permit**

**Use:** According to the applicant, the proposed 7-foot tall fence is intended to provide additional privacy so that the adjoining neighbor cannot see into their yard and home.

Any side yard fence that is 6-7 ft. tall requires a written agreement from adjoining property owners or approval of a Use Permit. As the fence is located on commonly owned property, the Homeowner's Association has been consulted; they have given their consent (Attachment E).

**Site Layout:** The Hidden Valley Condominium development is located on a property that is approximately 15 ft. lower than the surrounding single-family homes and level with Sunken Gardens Golf Course. The rear yards of the subject site have approximately 20-30 ft. of flat ground and then the yards slope up towards the boundary of the development.

An existing 6 ft. tall fence is located between the yard area of the subject property and the appellant's property (left side of the subject property). Tall shrubs inside the subject property screen most of the area along this fence. The proposed fence starts approximately where the shrubs end and is 1 ft. inside the property, overlapping the existing 6 ft. fence (see Attachment C showing the existing Fence 1 and proposed Fence 2). The fence length is approximately 25 ft. long.

**Fence Design:** The proposed fence is 7 ft. tall as measured from the subject property side. It is 6 ft. board-on-board with 1 ft. of lattice on top. The fence

height varies dependent on the grade, but does not exceed 7 ft., stepping up proportionally with the grade slope at the rear of the yard. The existing fence dies into the backyard slope (see Attachment C, Side Elevation and Attachment F, Photos).

### **Expected Impact on the Surroundings**

**Neighbor Concerns:** Staff has had several discussions with the neighbor regarding her concerns with the fence, which include the visual impacts and shading of her garden. The proposed fence is higher than the current fence and can be seen from the neighbor's property. The fence also has a slightly different design (one foot of lattice on top) as opposed to the existing board-on-board. The neighbor has an elevated garden along the property boundary (see Attachment F page 1 of 2, Photos), and she is concerned the proposed fence creates additional shadow on the garden. The neighbor wants the fence to be removed.

**Staff Discussion:** A dispute over a 7 ft. tall side yard fence is unusual. Staff has received only three other Use Permit applications where an adjoining property owner would not sign the fence agreement out of almost 500 Miscellaneous Plan Permit and Use Permit fence applications received since 1995. Two of these Use Permit applications were withdrawn and one was approved at a City Council hearing after two appeals from the neighbor.

There are two competing values in this project: the desire for privacy vs. possible visual and shadow impacts on adjoining property. Yard privacy is desired by most homeowners, and combinations of screening landscaping and higher fences are used to achieve that goal. Neighbors who disagree with a higher fence typically have concerns regarding aesthetics and shade.

Staff has evaluated the visual and shadow impacts of the fence. The fence is a standard residential design with lattice on top, as well as an additional 1 ft. setback from the yard boundary. Due to the height and orientation of the fence, staff believes the additional one foot of lattice will have minimal shadow effect on the existing garden. As this fence is a typical height, style and location for rear yards, staff is able to make the Findings and recommends approval of the Use Permit.

### **Comment on the Appeal**

The appeal letter is brief, stating concerns with the information contained in the staff report (Attachment H, Appeal Letter). The appellant has repeatedly expressed concerns that the fence is taller than 7 ft. Information provided by the applicant, as well as a measuring done by City staff have confirmed the height of the fence at 7 ft. from the subject property. Additional concerns

regarding the CC&R's were mentioned (Attachment G, Minutes). CC&Rs are private agreements that are not enforced by the City.

Nearly three months have passed since the appeal was filed. Staff has been working with the appellant to provide her information that she has requested (Attachment I, Correspondence Between City Staff and the Appellant), and the appellant and applicant have had limited availability to attend a public hearing. To date, staff has not been able to find a hearing time that was acceptable to the appellant. In order to bring closure to this issue, staff scheduled the hearing without express consent from the appellant. Staff has left phone messages and sent a notice to her residence.

### **Findings, General Plan Goals and Conditions of Approval**

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Staff was able to make the required Findings based on the justifications for the Use Permit.

- Findings and General Plan Goals are located in Attachment A.
- Conditions of Approval are located in Attachment B.

### **Fiscal Impact**

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No fiscal impacts other than normal fees and taxes are expected.

### **Public Contact**

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Both Planning and Neighborhood Preservation staff has had several conversations with the next door neighbor regarding this application. Staff has corresponded with the appellant since the appeal was filed.

<b>Notice of Public Hearing</b>	<b>Staff Report</b>	<b>Agenda</b>
<ul style="list-style-type: none"> <li>• Published in the <i>Sun</i> newspaper</li> <li>• Posted on the site</li> <li>• 4 notices were mailed to the adjacent property owners of the project site</li> </ul>	<ul style="list-style-type: none"> <li>• Posted on the City of Sunnyvale's Website</li> <li>• Provided at the Reference Section of the City of Sunnyvale's Public Library</li> </ul>	<ul style="list-style-type: none"> <li>• Posted on the City's official notice bulletin board</li> <li>• City of Sunnyvale's Website</li> <li>• Recorded for SunDial</li> </ul>

### **Alternatives**

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1. Approve the Use Permit with conditions.
2. Approve the Use Permit with modified conditions.
3. Deny the Use Permit.

### **Recommendation**

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Alternative 1.

Prepared by:

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Diana O'Dell  
Project Planner

Reviewed by:

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Fred Bell  
Principal Planner

Reviewed by:

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Trudi Ryan  
Planning Officer

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site and Architectural Plans
- D. Justifications from the Applicant
- E. Letter from the Homeowner's Association
- F. Photos
- G. Minutes from the Administrative Hearing of July 28, 2004
- H. Letter of Appeal
- I. Correspondence Between City Staff and the Appellant



**Recommended Findings - Use Permit**

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1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale as the height, and design of the fence are typical of residential fencing designed to provide additional privacy for yard areas and meets the City-Wide Design Guideline policies.

*City-Wide Design Guidelines E5. – Privacy fences over 6 ft. high in residential areas shall consist of lattice work for that portion of fence being over 6 ft. high.*

The proposed fence meets this guideline with one foot of lattice on top of a 6 ft. board-on-board fence.

2. The proposed use is desirable, and will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the Zoning District because the one-foot setback of the fence combined with the lattice design on top minimizes shadow impacts on the adjoining garden and the design of the fence is of adequate quality that it will not create a negative visual impact.

**Recommended Conditions of Approval – Use Permit**

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In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. The applicant shall obtain a Building Permit for the proposed fence within one month of the date of final approval of the Use Permit.